

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 15-CR-20493-01

vs.

HON. BERNARD A. FRIEDMAN

EDWARD LEE FOSTER,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

Defendant has filed a motion in this matter for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) [docket entry 72]. Defendant indicates that he is forty years old and has asthma, obesity, diabetes, schizoaffective disorder, high cholesterol, and high blood pressure. *See* Def.'s Br. at 2. Defendant argues that "[b]ecause of his age and severe medical conditions, [he] is at greater risk of dying than other inmates if he contracts COVID-19." *Id.*

The Court must deny this motion because defendant has not shown that he has complied with the statute's exhaustion requirement. Section 3582(c)(1)(A) states that

the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment . . . if it finds that— (i) extraordinary and compelling reasons warrant such a reduction

The Sixth Circuit has held that this exhaustion requirement is mandatory, and that if a defendant files a motion seeking relief under this section without first complying with § 3582(c)(1)(A), the district court must deny the motion without prejudice. *See United States v. Alam*, 960 F.3d 831 (6th Cir. 2020).

In the instant motion, defendant recognizes that exhaustion of administrative remedies is a prerequisite for seeking relief from this Court. *See* Def.'s Br. at 5, 7. However, defendant has not provided evidence of exhaustion, such as a copy of his request or the warden's response. It is defendant's burden to show that he has satisfied the exhaustion requirement, *see United States v. Van Sickle*, No. CR18-0250JLR, 2020 WL 2219496, at *3 (W.D. Wash. May 7, 2020) (collecting cases), and in these circumstances defendant has not met this burden. Accordingly,

IT IS ORDERED that defendant's motion for compassionate release is denied without prejudice.

Dated: August 21, 2020
Detroit, Michigan

s/Bernard A. Friedman
Bernard A. Friedman
Senior United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on August 21, 2020.

Edward Lee Foster, #51234-039
Morgantown Federal Correctional Institution
Inmate Mail/Parcels
P.O. BOX 1000
MORGANTOWN, WV 26507

s/Johnetta M. Curry-Williams
Case Manager